

BEFORE THE PLANNING COMMISSION  
OF THE CITY OF YAKIMA

<u>In the matter of:</u>	)	
	)	Public Hearing: January 8, 2014
Proposed Regulation of Marijuana	)	Special Meeting: January 15, 2014
Production, Processing and Retail	)	FINDINGS OF FACT, CONCLUSIONS
Uses in City of Yakima	)	OF LAW, AND RECOMMENDATION
_____	)	

THIS MATTER, having come before the Planning Commission of the City of Yakima (hereafter "Planning Commission") upon public hearing on January 8, 2014, and the Planning Commission having considered the record herein and all evidence and testimony presented, hereby makes the following

FINDINGS OF FACT

1. A public hearing was held before the Planning Commission on January 8, 2014 pursuant to notice duly published, all in accordance with applicable procedures of the Yakima Municipal Code and state law, with a special meeting conducted January 15, 2014.
2. No objection was made to any member of the Planning Commission hearing and deciding all issues in this matter.
3. On November 6, 2012, the voters of the State of Washington approved Initiative Measure No. 502, ("Initiative 502"), now codified within Chapters 69.50, 46.04, 46.20, 46.21 and 46.61 RCW, which provisions (a) decriminalized possession and use of certain amounts of marijuana and marijuana paraphernalia; (b) amended state laws pertaining to driving under the influence of intoxicants to include driving under the influence of marijuana; and (c) authorized promulgation of regulations and issuance of licenses by the Washington State Liquor Control Board ("WSLCB") for the production, processing and retailing of marijuana.
4. Congress has previously enacted the *Comprehensive Drug Abuse Prevention and Control Act of 1970*, Pub.L. No. 91-513, 84 Stat. 1236, to create a comprehensive drug enforcement regime it called the *Controlled Substances Act*, 21 U.S.C. § 801-971. Under the Controlled Substances Act (also "CSA"), Congress established five "schedules" of controlled substances. Controlled

substances are placed in specific schedules based upon their potential for abuse, their accepted medical use in treatment, and the physical and psychological consequences of abuse of the substance. See 21 U.S.C. § 812(b).

5. Marijuana is currently listed as a “Schedule I” controlled substance, 21 U.S.C. § 812(c), Schedule I(c)(10). For a substance to be designated a Schedule I controlled substance, it must be found: (1) that the substance “has a high potential for abuse”; (2) that the substance “has no currently accepted medical use in treatment in the United States”; and (3) that “[t]here is a lack of accepted safety for use of the drug or other substance under medical supervision.” 21 U.S.C. § 812(b)(1). The Controlled Substances Act sets forth procedures by which the schedules may be modified. See 21 U.S.C. § 811(a).
6. Under the Controlled Substances Act, it is unlawful to knowingly or intentionally “manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance,” except as otherwise provided in the statute. 21 U.S.C. § 841(a)(1). Possession of a controlled substance, except as authorized under the Controlled Substances Act, is also unlawful.
7. The United States Supreme Court has held in *Gonzales v. Raich*, 545 U.S. 1, 125 S.Ct. 2195, 162 L.Ed. 2d 1 (2005). that Congress was within its rights and powers under the Commerce Clause to regulate marijuana as a Schedule I controlled substance pursuant to the Controlled Substances Act, and that, under the Supremacy Clause of the U.S. Constitution, the federal Controlled Substances Act will prevail over any conflicting state law.
8. WAC 314-55-020(11) promulgated by the WSCLB under the authority of Initiative 502 describes the license permit process and includes the following limitation:

(11) The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements.
9. Pursuant to Article 11, § 11 of the state Constitution, the general police powers granted to cities empower and authorize the City of Yakima to adopt land use controls to provide for the regulation of land uses within the city and to provide that such uses shall be consistent with applicable law.
10. One of the primary purposes of the Growth Management Act is to empower cities planning under the Act to develop and adopt land use controls reflecting the local

needs of the community. As provided in RCW 36.70A.010: "It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning."

11. The Planning Commission finds and determines that Initiative 502 does not preempt the City of Yakima from exercising and administering its constitutional and statutory land use regulatory authority to either allow and regulate land uses within the city limits, or to prohibit and ban such uses.
12. The Planning Commission finds and determines that the prohibition of marijuana production, processing and retailing as defined by Initiative 502 and regulations promulgated thereunder is consistent with federal law and not in conflict therewith.
13. The Planning Commission finds and determines that prohibiting within the City of Yakima the production, processing and retailing of marijuana, as set forth in Initiative 502 and its implementing regulations, will maintain adequate access in areas in the vicinity of the city for marijuana production, processing and retailing for residents within the City of Yakima, and is consistent with the provisions of Initiative 502 and its implementing regulations.
14. The Planning Commission finds and determines that documented secondary effects associated with analogous medical marijuana dispensaries in other cities and counties include murders, robberies, burglaries, drug dealing, sales to minors, loitering, heavy foot and vehicle traffic, increased noise, odors, health hazards such as proliferation of molds; See, "White Paper on Marijuana Dispensaries," California Police Chiefs Association's Task Force on Marijuana Dispensaries (April 22, 2009) was issued ("CAPCA White Paper"); *City of Riverside v. Inland Empire Patients Health and Welfare Center*, 56 Cal.4<sup>th</sup> 729, 756, 300 P.3d 494 (2013).
15. The Planning Commission finds and determines that the prohibition of marijuana production, processing and retail uses within the City of Yakima is the only effective means to protect residential districts, recreational facilities, families and children within the City of Yakima.
16. The Planning Commission finds and determines that Section 15.01.035 of the Yakima Municipal Code should be amended to prohibit marijuana production, processing and retailing, as defined in Initiative 502 and its implementing regulations, within the City of Yakima.
17. The Planning Commission finds and determines that the prohibition of marijuana production, processing and retailing is subject to the authority and general police

power of the city to develop specific and appropriate land use controls regarding such uses, and the City Council reserves its powers and authority to appropriately amend, modify and revise such prohibition to implement such land use controls in accordance with applicable law.

18. The Planning Commission finds and determines that such amendments authorized herein are not intended to regulate the individual use of marijuana as authorized by Initiative 502.
19. The Planning Commission finds and determines that Title 15 of the Yakima Municipal Code should be amended as set forth in Exhibit "A" attached hereto and incorporated herein by this reference, to add a new subsection to YMC 15.01.035 providing that no use that is illegal under local, state or federal law shall be allowed in any zone within the city, and that such amendment specifically applies to prohibit, within the City of Yakima, the production, processing and retail sale and distribution of marijuana, all as specifically defined and described in Initiative Measure No. 502 and Chapter 314-55 of the Washington Administrative Code (WAC), as now existing or hereafter amended.
20. The Planning Commission finds and determines that the proposed amendment as set forth in Exhibit "A" does not regulate, and is not intended to regulate, individual possession, consumption and use of marijuana as authorized pursuant to Initiative Measure No. 502, codified within Chapters 69.50, 46.04, 46.20, 46.21 and 46.61 RCW, which possession, consumption and use shall be subject to the provisions of such state statutes and enactments.
21. Any Finding of Fact, or portion thereof, hereafter determined by a court of competent jurisdiction to be a Conclusion of Law shall be construed as a Conclusion of Law without derogation of any other Finding of Fact.

Having made the above Findings of Fact, the Planning Commission makes the following

#### CONCLUSIONS OF LAW

1. The Planning Commission has jurisdiction to receive all evidence and testimony in this matter, and to make these Findings of Fact, Conclusions of Law and Recommendation concerning all issues herein.
2. There being no objection to any member of the Planning Commission proceeding to hear and consider all matters herein, any and all objections arising or alleged to

arise out of the appearance of fairness doctrine or provisions related to conflict of interest are hereby deemed waived.

3. All procedural requirements pertaining to notice, scheduling and conducting the public hearing have been met and are satisfied.
4. All procedural requirements pertaining to amendment of Title 15 of the Yakima Municipal Code have been met and are satisfied.
5. The proposed legislation as set forth in Exhibit “A” attached hereto consists of a proposal to adopt legislation by ordinance relating solely to governmental procedures and contains no substantive standards respecting use or modification of the environment, and is therefore categorically exempt from threshold determination and EIS requirements under the State Environmental Policy Act (SEPA) pursuant to WAC 197-11-800(19).
6. The adoption of the proposed legislation as set forth in Exhibit “A” constitutes an exercise of the general police and regulatory powers of the city as authorized by, but not limited to: Washington State Constitution Article 11, Section 11; Chapter 35.22 RCW, and RCW 35.22.195; Charter of the City of Yakima, Article I; and the Yakima Municipal Code.
7. The exercise of the city’s general police and regulatory power to adopt the proposed legislation is specifically authorized by and consistent with Initiative 502 as adopted and codified within the Revised Code of Washington and Chapter 314-55 WAC, including but not limited to WAC 314-55-020(11).
8. The adoption of the proposed legislation is not in conflict with, nor preempted by, the *Comprehensive Drug Abuse Prevention and Control Act of 1970*, Pub.L. No. 91-513, 84 Stat. 1236, or the *Controlled Substances Act*, 21 U.S.C. § 801-971.
9. The adoption of the proposed legislation is not in conflict with, nor preempted by, Initiative 502 as adopted and codified within the Revised Code of Washington, and Chapter 314-55 WAC.
10. The adoption of the proposed legislation constitutes a land use control rationally and reasonably related to control documented secondary effects arising from unregulated marijuana dispensaries and collective gardens. The city is entitled to rely on facts, reports and studies of prepared by other jurisdictions when analyzing secondary effects associated with marijuana. *See, e.g., City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41, 106 S.Ct. 925 (1986).

11. Under the current application of federal law prohibiting the production, dispensing, possession and use of marijuana, and the provisions of state law decriminalizing production, possession and use of marijuana as authorized by Initiative 502 as adopted and codified in the Revised Code of Washington, no clear precedential decisions of any court with jurisdiction have been issued, nor federal legislation passed, addressing the conflict between applicable federal law and state law decriminalizing use, possession, production, processing and retailing of marijuana. In the absence of such clarification, the city is at risk of being found to have aided and/or abetted a violation of applicable federal law by adopting and implementing any regulatory scheme that could be construed to constitute an authorization of conduct in violation of federal law. The adoption of the proposed legislation constitutes an exercise of the city's general police powers to prohibit any such marijuana production, processing and retail use, sale and distribution in any zone of the city, thereby adopting local regulation not in conflict with either state or applicable federal law. In the event any court of competent jurisdiction issues a decision with precedential effect for courts of the State of Washington, or in the event subsequent legislation is passed, removing any conflict between federal and state law, the city has authority under its general police and regulatory powers to adopt subsequent legislation to impose and implement appropriate controls for the land use regulation of marijuana production, processing and retailing.
12. The Planning Commission concludes that the adoption of the proposed legislation attached hereto as Exhibit "A" will prohibit only the production, processing and retailing of and for marijuana within the City of Yakima, and will not prohibit the individual use, possession or consumption of marijuana authorized in accordance with, and subject to the provisions and restrictions of, Initiative 502 as adopted and codified in the Revised Code of Washington.
13. Any Conclusion of Law, or portion thereof, hereafter determined by a court of competent jurisdiction to be a Finding of Fact shall be construed as a Finding of Fact without derogation of any other Conclusion of Law.

Having made the above Findings of Fact and Conclusions of Law, the Planning Commission hereby renders its

#### RECOMMENDATION TO CITY COUNCIL

The Planning Commission of the City of Yakima, having received and considered all evidence and testimony presented at public hearing, and having received and reviewed

the record herein, hereby recommends that the City Council of the City of Yakima APPROVE the proposed legislation attached hereto as Exhibit "A."

ADOPTED AND APPROVED this 15<sup>th</sup> day of January, 2014.

By: \_\_\_\_\_  
Dave Fonfara, Chair